



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 2506-00

8 September 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 20 July 1982 for four years at age 19. Your pre-enlistment papers indicate you were granted a pre-service waiver for use of marijuana. The record reflects that you were advanced to SA (E-2) and served without incident until 28 April 1983 when you were counseled after a Navy laboratory reported that you had tested positive for marijuana. You were warned that failure to take corrective action could result in administrative separation. On 6 May 1983 you received nonjudicial punishment (NJP) for use of marijuana. Punishment imposed consisted of a forfeitures of \$286 pay per month for two months, reduction in rate to MSSR (E-1), and 30 days of restriction and extra duty which was suspended. On 30 June 1983 you signed a statement that you were briefed and understood the Navy's policy on substance abuse, and that any further involvement with illegal drugs would not be tolerated. You were advanced to MSSA again on 6 November 1983.

On 17 May 1984, you were recommended for a general discharge by reason of misconduct due to drug abuse and drug abuse rehabilitation failure as evidenced by a positive urinalysis for marijuana on a command directed urinalysis on 12 April 1984. However, Commander, Naval Military Personnel Command (CNMPC) directed that you be reprocessed in accordance with applicable regulations and advised that discharge could be under other than honorable conditions.

On 9 July 1984, you were recommended for discharge under other than honorable conditions by reason of drug abuse rehabilitation failure and misconduct due to drug abuse. You were advised of your procedural rights, declined to consult with legal counsel, and waived your right to an administrative discharge board (ADB). On 18 July 1984, CNMPC directed separation under other than honorable conditions by reason of misconduct due to drug abuse. You were so discharged on 25 July 1984.

On 7 June 1994 the Naval Discharge Review Board (NDRB) denied your request for an upgrade of your discharge.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, good post-service conduct, employment resume and performance appraisal, a performance award and certificate of appreciation, and a letter of reference. The Board noted the issues you presented to the NDRB in June 1994 and your contention that your discharge was inequitable because it was based on an isolated incident of bad judgment. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization of your discharge given your record of an NJP for use of marijuana and the fact that after you were counseled regarding the Navy's drug policy, you tested positive a second time on a command directed urinalysis. The Board concluded that this demonstrated a willful disregard for Navy policy and discipline. The Board noted the aggravating factor that you waived an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. While your post-service achievements are notable, the Board was not persuaded they were sufficiently mitigating to warrant recharacterizing your service. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board.

In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director